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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,531	01/29/2004	Wayne E. Vick	45626/284122	5370
23370 7590 01/24/2007 JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			EXAMINER BRITTAIN, JAMES R	
			ART UNIT	PAPER NUMBER
			3677	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
30 DAYS		01/24/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10/767 531

EXAMINER

ART UNIT	PAPER
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20070120

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

See attached Notice of Non-Compliant Amendment (37 CFR 1.121).

James R. Brittain
Primary Examiner
Art Unit: 3677

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

10/767,531

Examiner

James R. Brittain

Applicant(s)

VICK, WAYNE E.

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 27 October 2006 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: See Continuation Sheet.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable

Telephone No.

Continuation of 4(e) Other: 37 CFR 1.121(c)(5) states "A claim which was previously canceled may be reinstated only by adding the claim as a "new" claim with a new claim number." The October 27, 2006 amendment seeks to reinstate claims 1-19 and 30-40. Claims 1-10 and 30-40 were canceled in the preliminary amendment received January 29, 2004, as shown in the claim listing of that date, and applicant's accompanying remarks on the first page, paragraph 2, lines 1-2 states "Claims 1-10, and 30-40 have been cancelled; having been pursued as either originally elected claims of the parent application or as claims in a concurrently filed divisional application." Further elaboration by applicant about the cancellation of claims 1-19 and 30-40 is unequivocally stated again by applicant in paragraph 3 of the remarks accompanying the preliminary amendment with the statement in paragraph 4 that "The present application is directed to originally restricted Group II claims (20-29) of the parent application". There is nothing inadvertent about the cancellation by applicant of claims 1-10 and 30-40 and it is consistent with the "Fee Transmittal for FY 2004" (PTO/SB/17) received from applicant on January 29, 2004 that indicates there are a total of 10 claims filed with one independent claim and applicant paid a filing fee on the basis of his representation. Applicant was so notified that only claims 20-29 were pending in the cover sheet (PTOL-326) accompanying the non-final rejection mailed April 25, 2005 with no indication of any withdrawn claims as indeed there were no withdrawn claims as there was no restriction made in this case because pending claims 20-29 were drawn to the invention of Group II as defined in the parent application. The subsequent amendment filed concurrently with the Request for Continued Examination of May 15, 2006 continued the representation of claims 1-19 and 30-40 as not pending. Applicant clearly states in the first paragraph of his remarks received May 15, 2006 in lines 3-6: "Claims 20-22 and 24-29 are amended, and claim 23 is cancelled by the present response. Accordingly, claims 20-22 and 24-29 remain pending in the present application. A Request for Continued Examination (RCE) and fee are concurrently presented with this amendment and response." This statement is consistent with the May 15, 2006 listing and applicant was charged fees for the Request for Continued Examination consistent with applicant's representation of the claim status presented in the May 15, 2006 submission. Applicant now states, over two years after the preliminary amendment received January 29, 2004, that it was an inadvertent indication that claims 1-19 and 30-40 were canceled, the listings were in error and Assignee has not canceled claims 1-10 and 30-40. There is nothing inadvertent in the statements provided by applicant in the preliminary amendment filed January 29, 2004 that canceled claims 1-10 and 30-40 and served as the basis for applicant's filing fee insofar as excess claims over the basic filing fee not being present. As indicated in the first sentence, "A claim which was previously canceled may be reinstated only by adding the claim as a "new" claim with a new claim number" and since applicant has failed to comply with 37 CFR 1.121(c)(5), the amendment is informal. It is suggested that if applicant still seeks to reinstate "cancelled" claims that it be done so in accordance with 37 CFR 1.121(c)(5). As it stands, applicant's attempt to reinstate a large number of claims that applicant himself canceled by preliminary amendment on January 29, 2004 and represented in the "Fee Transmittal for FY 2004" as having been canceled and thereby reduced the filing fee from what it would have been if there had been 40 total claims with 6 independent claims as now being inadvertent and in error is not well taken and is an inappropriate way to reinstate canceled claims.